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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 391

GEORGE B. PARR, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FURTHER SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

One of the two issues on which review is sought is whether the district court erred in refusing to make available to the defense, for use in cross-examination, the transcript of the testimony of government witness Diego Heras before the federal grand jury which returned the indictment. In opposing review, we have argued that the trial court properly denied production of such transcript.

Through inquiry initiated after the preparation of the government's supplemental memorandum, the government has just learned that, in any event, this grand jury testimony was not recorded in any way. Thus, no transcript of Heras' grand jury testimony exists.

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The grand jury assignment book in the United States Attorney's office, signed by the grand jury clerk, shows that Diego Heras and another witness were examined on March 6, 1956, and a True Bill was returned, but that no court reporter was present. Grant Perry, the court reporter, has advised us that he recalls that he did not record the grand jury testimony of either Heras or the other witness on that day, although he did record the testimony of other witnesses before the grand jury.

Although the then United States Attorney stated during trial that he was in possession of a transcript of Heras' testimony before the grand jury which returned this indictment (X 3335–36; see VIII 2441), this statement was in error. The statement was made during the course of a colloquy concerning the production of out-of-court statements made by William Benson, another government witness. The United States Attorney simply had forgotten that Heras' testimony was not recorded and transcribed, as was also true of the testimony of the other witness on March 6, 1956. The anticipated trial testimony of these two witnesses was already clearly set forth in many statements made prior to their appearance before the grand jury (16 as to Heras alone)—statements subsequently turned over to petitioners at trial. The United States Attorney actually had a transcript of Heras' testimony given on October 27, 1954, before a grand jury which

returned an income tax indictment against petitioner Parr alone (see *Parr* v. *United States*, 351 U.S. 513).

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MALCOLM R. WILKEY,
Assistant Attorney General.

DECEMBER 1959.

U.S. GOVERNMENT PRINTING OFFICE: 1959